

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

LINDA L. KRUGER (formerly ARROYO))

Claimant)

VS.)

U.S.D. 500)

Respondent,)

Self-Insured)

Docket No. 261,385

ORDER

Respondent appealed the February 5, 2003 Supplemental Preliminary Decision entered by Administrative Law Judge Robert H. Foerschler.

ISSUES

Claimant contends she injured her back in a series of accidents through September 11, 2000. In the Board's January 15, 2003 Order, the Board determined that claimant had proven she suffered repetitive injuries and aggravations from a series of accidents arising out of and in the course of her employment with respondent as an orchestra director and musical instrument instructor. The Board then remanded the claim to the administrative law judge for further orders.

On February 5, 2003, Judge Foerschler addressed the remand by entering the Supplemental Preliminary Decision, which required respondent both to pay temporary total disability benefits and to provide claimant with an appropriate medical specialist. Respondent now appeals that order and contends the Judge lacked the authority to issue the February 5, 2003 preliminary hearing order without addressing the notice issue that had previously been raised. Respondent requests the Board to reverse the February 5, 2003 order because claimant allegedly failed to provide timely notice of the accidental injury. Respondent also contends claimant failed to prove that she sustained a work-related injury.

Conversely, claimant argues the February 5, 2003 preliminary hearing order should be affirmed as she contends she has proven that she injured her back in a series of accidents lifting musical instruments. She also contends respondent had timely notice of her back injury.

The only issues before the Board on this appeal are:

1. Did claimant sustain personal injury by accident arising out of and in the course of employment with respondent?
2. If so, did claimant provide respondent with timely notice of the accidental injury?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the Board finds and concludes:

The February 5, 2003 Supplemental Preliminary Decision should be affirmed.

On January 15, 2003, this Board entered an Order finding that claimant sustained repetitive injuries and aggravations to her back from a series of accidents arising out of and in the course of employment. No new evidence has been presented on that issue. Accordingly, the Board declines to modify its previous finding and, for preliminary hearing purposes, continues to hold that claimant's present back problems arose out of and in the course of her employment with respondent.

The Board also finds that claimant provided respondent with timely notice of her back injury. Claimant's testimony is credible that between late August 2000 and claimant's last day of work for respondent on September 11, 2000, she had several conversations with her supervisor, Jean Ney, in which claimant related her back problems to moving musical instruments in connection with her job.

The Workers Compensation Act provides that a worker has 10 days from the date of an accident to report the incident to the employer.¹ And in some circumstances that 10-day period can be extended to 75 days. The Board concludes that claimant's series of accidents and injuries continued through her last day of work on September 11, 2000. Consequently, through the various conversations claimant was having with her supervisor, respondent was made aware of claimant's back injury while it was occurring. Claimant has established that she provided respondent with timely notice of her accidental injury.

The Board adopts the findings and conclusions set forth in its January 15, 2003 Order.

WHEREFORE, the Board affirms the February 5, 2003 Supplemental Preliminary Decision entered by Judge Foerschler.

¹ K.S.A. 44-520.

IT IS SO ORDERED.

Dated this ____ day of April 2003.

BOARD MEMBER

- c: Thomas Stein, Attorney for Claimant
Robert J. Wonnell, Attorney for Respondent
Robert H. Foerschler, Administrative Law Judge
Director, Division of Workers Compensation